Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996	))	CC Docket No. 97-11

**COMMENTS OF THE
UNITED STATES TELEPHONE ASSOCIATION**

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February 24, 1997

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Summary

USTA generally supports the Commission's tentative conclusions to forbear from imposing Section 214 requirements as discussed in the Notice of Proposed Rulemaking. The Commission, however, should adopt a single definition applicable to extensions of an existing line and construction of new lines that eliminates administratively burdensome and costly Section 214 approvals. In addition, the Commission should not require price-cap common carriers with sharing and rate-of-return companies to meet different Section 214 requirements merely because of their regulatory status. The Commission should adopt the pro-competitive, deregulatory intent of the Telecommunications Act of 1996 by administering its forbearance policy in a consistent and non-discriminatory manner.

USTA also urges the Commission to eliminate restrictions that impose unnecessary Section 214 requirements on small projects undertaken by common carriers. Moreover, Section 214 reporting requirements should be eliminated, and streamlined requirements for reduction or discontinuation of services should be adopted. Also, Section 214 requirements do not apply to the construction of video programming facilities by common carriers.

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INTRODUCTION

The United States Telephone Association ("USTA") hereby files these comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM").[1] USTA is the principal trade association of the incumbent local exchange carrier industry ("ILECs).

USTA supports the Commission's tentative conclusions regarding the implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996 ("Act").[2] Forbearance from unnecessary regulations is consistent with Congressional intent provided by the Act for a "pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to

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[1] *In the Matter of Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking (January 13, 1997).

[2] Pub. L. No. 104-104, 110 Stat. 56, *codified* at 47 U.S.C. §151 *et seq.*

all Americans...."[3] USTA, however, opposes requiring price-cap LECs with sharing and rate-of-return companies to seek Commission approval under Section 214.[4] Contrary to the Commission's reasoning, ILECs lack market power to impose unnecessary overbuilding, and current regulations provide significant protection for consumers. In addition, USTA supports a single definition for defining a line extension, no reporting requirements on any construction projects, elimination of annual and semi-annual reports, streamlined regulations for reducing or discontinuing service, and eliminating the Commission's approval of construction of video programming facilities.

I. A SINGLE DEFINITION FOR EXTENSION OF EXISTING LINES AND CONSTRUCTION OF NEW LINES SHOULD BE ADOPTED

The Commission seeks comment on definitions of a line extension and a new line.[5] In the Commission's review of recent and past efforts to define these terms, it is clear that prior efforts have created more confusion then clarity. As the Commission's review of historical precedent demonstrates, a single definition is appropriate and necessary given the passage of the Act, competition within and across industry segments, and global competition reflected by the recent World Trade Organization agreement.[6]

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[3] Telecommunications Act of 1996, Joint Explanatory Statement of the Conference Committee, Senate Report 104-230 at 113.

[4] 47 U.S.C. §214.

[5] *NPRM* at 4-17, ¶¶1-36.

[6] On February 15, the World Trade Organization announced agreement among some 71 nations to open markets to global telecommunications competition.

By definition, an extension of a line is the creation of a new line. Therefore, the Commission should define an extension of a line to mean the creation of a new line for the purpose of providing telecommunications services, whether the line is an extension of existing lines or creation of new lines to provide telecommunications services. Adoption of USTA's definition would facilitate the expedited deployment of telecommunications services without unnecessary delay. In addition, this definition does not interfere with the Commission's other Section 214 authority involving reduction or discontinuance of service.

II. COMMISSION FORBEARANCE OF SECTION 214 SHOULD APPLY TO PRICE CAP COMPANIES WITH SHARING OBLIGATIONS AND RATE-OF-RETURN COMPANIES

The Commission seeks comment on whether price-cap LECs with sharing obligations should be required to meet the Commission's proposed streamlined Section 214 requirements.[7] According to the Commission, such companies, like rate-of-return companies, have an incentive to build unnecessary facilities at consumer expense. There simply is no basis for the Commission to assume, in a competitive market, that ILECs would engage in unnecessary construction of facilities. Moreover, the Commission's current position on cost recovery makes clear that ILECs lack any incentive to "gold plate" their networks. USTA agrees with the Commission's tentative conclusion that whether a price-cap company elects a sharing or no sharing option "additional regulation under Section 214 is not required to protect telephone

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[7] *NPRM* at 19, ¶41. As the Commission noted, only US West, Southern New England Telephone Company, Citizens Utilities Company, and certain GTE companies have adopted a sharing X factor. *Id.* at n. 70.

service ratepayers adequately against potentially higher rates resulting from investment in unnecessary facilities."[8]

The Commission also tentatively concludes that rate-of-return companies should comply with Section 214, albeit a streamlined Section 214 application process, because "the rate regulation method applied to them gives them an incentive to overinvest in facilities and because they lack external constraints on their ability to pass such costs on to telephone service ratepayers."[9] As with price-cap companies with sharing obligations, the Commission erroneously assumes, on a going forward basis, that ILECs will arbitrarily construct facilities in which cost recovery is not assured. Clearly, the Commission's adoption of Section 214 for so-called dominant rate-of-return companies is inconsistent with the forbearance provisions under the Act and the Commission's own conclusions reached in the *NPRM*. The purpose of Section 214 is to prevent common carriers from constructing unnecessary facilities. As the Commission acknowledges, Section 401 of the Act directs the Commission to forbear from enforcing a regulation when (1) enforcement is not necessary to ensure that the charges, practices, classifications or regulations by, for, or in conjunction with a carrier or service are just and reasonable and not unjustly or unreasonably discriminatory; (2) enforcement is not necessary to protect consumers; and (3) forbearance is consistent with the public interest.[10] A determination by the Commission that forbearance will promote competition is a basis for finding that

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[8] *Id.* at ¶41.

[9] *NPRM* at 24, ¶52.

[10] 47 U.S.C. §160.

forbearance is in the public interest.[11]

The Commission's own *NPRM* concludes that the "Section 214 certification process is not designed to prevent abusive practices and furthermore, the Commission has in place rules specifically addressing anticompetitive and discriminatory practices .... to ensure that carrier rates and practices are just, reasonable, and nondiscriminatory."[12] Therefore, the forbearance provisions in Section 401 of the Act are satisfied. Moreover, every domestic ILEC faces competition under the competitive entry provisions of the Act.[13] USTA agrees with the Commission's reasoning that "Because a carrier facing competition cannot rationally build excessively or raise rates above the competitive level, Section 214 regulation of such carriers for these purposes will not serve the intent of Section 214. At the same time, by eliminating the significant regulatory burden imposed by Section 214, we will facilitate entry into the markets for these services."[14] The Commission should apply this reasoning to rate-of-return and price-cap ILECs, and not impose Section 214 requirements.

The Commission's fears of "gold plating" by ILECs of their networks is unfounded. The Commission's current access and universal service reform proceedings,[15] expected reform of

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[11] *Id.* at §160(b).

[12] *NPRM* at 21, ¶45.

[13] 47 U.S.C. §§251 and 252.

[14] *NPRM* at 12, ¶25 n.44.

[15] *In the Matter of Access Charge Reform*, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, CC Docket No. 96-262 (December 24, 1996); *In the Matter of Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking and Order Establishing Joint Board, CC Docket No. 96-45 (March 8, 1996); *Joint Board Recommended Decision*, CC Docket No. 96-45 (November 8, 1996).

the separations process, and existing federal and state oversight provide ample protection for consumers envisioned by the forbearance provisions of the Act.[16] The Commission also has an entire regulatory regime devoted to providing incentives for rate-of-return companies to be more efficient to enable such companies "to introduce new services quickly, as well as to stimulate the development of new, innovative service offerings, and to have those services made available to the public as quickly as possible."[17]

Simply put, a special set of streamlined Section 214 regulations for several price-cap companies with sharing and rate-of-return companies is unwarranted, discriminatory, contrary to the Act's forbearance provisions and inconsistent with the Act's pro-competitive, deregulatory mandate. USTA urges the Commission to forbear from adopting regulations which would impermissibly discriminate against some ILECs merely because they are regulated in a manner different from other ILECs.

III. COMMISSION REGULATION OF SMALL PROJECTS IS UNNECESSARY

The Commission proposes to grant blanket authority from Section 214 approval for small projects within specific dollar amounts.[18] Again, the Commission envisions that Section 214

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[16] For example, the Commission cites 47 C.F.R. Parts 32, 61, and 64 as existing regulations that address "anticompetitive and discriminatory practices." *NPRM* at 21, ¶45 n.76.

[17] *In the Matter of Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation*, Order on Reconsideration, CC Docket No. 92-135 at 15, ¶27 (February 18, 1997).

[18] *NPRM* at 27-28, ¶¶ 59-62.

approval beyond certain monetary levels is required to avoid perceived mischief on the part of common carriers who would allegedly construct unnecessary facilities. The Commission's own language in the *NPRM* acknowledges that Section 214 is not intended to protect consumers against anticompetitive and discriminatory activity.[19] In addition, the Commission should not impose burdensome regulations on ILECs merely because it thinks abuses will occur. As discussed earlier, existing regulations and current reforms of the telecommunications industry under the Act provides significant protections against abuses. USTA urges the Commission to forbear from imposing burdensome regulatory requirements and issue a blanket exemption from Section 214 requirements.

IV. SECTION 214 REPORTING REQUIREMENTS SHOULD BE ABOLISHED

The Commission recommends eliminating annual reporting requirements for companies engaged in small projects and semi-annual reports for those companies providing temporary or emergency services.[20] USTA supports the Commission's proposal. In addition, as stated before, USTA urges the Commission to not impose burdensome requirements for certain classes of carriers the Commission tentatively concludes are inclined to "gold plate" their networks at rate-payers' expense. The competitive market, existing regulations, and regulatory reform are sufficient to address any actual cases of anticompetitive or discriminatory behavior.

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[19] *Id.* at 21, ¶45.

[20] *Id.* at 28-29, ¶¶ 63-64.

V. THE COMMISSION SHOULD APPLY STREAMLINED REGULATIONS FOR DISCONTINUING OR REDUCING SERVICE

USTA supports the Commission's proposal to streamline the requirements for reducing or discontinuing service.[21] The Commission should, however, apply Section 63.71 of its rules to all carriers without restrictions. In addition, universal service requirements do not require a 60 day advance notice prior to modifications in service. Compliance with Section 63.71 customer notice and Commission reporting requirements are sufficient to allow reductions or discontinuance of services to take affect in the current 31 day time frame without adverse impact on consumers. Moreover, no additional safeguards are required.

VI. THE AMENDMENT TO SECTION 214 ELIMINATING CERTIFICATION FOR THE DELIVERY OF VIDEO PROGRAMMING IS APPROPRIATE

The Commission proposes to amend its rules to comply with the Act's requirement that Section 214 approval is not necessary for the construction of lines for video programming, and repeal of certain rules.[22] The Act requires the Commission to forbear from imposing Section 214 approval on common carriers "with respect to the establishment or operation of a system for the delivery of video programming."[23] USTA supports the Commission's amendment.

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[21] *Id.* at 30-32, ¶¶68-71.

[22] *Id.* at 32-33, ¶72.

[23] 47 U.S.C. §571(c).

CONCLUSION

USTA generally supports the Commission's tentative conclusions to eliminate burdensome Section 214 regulations as intended by the Act. The Commission, however, should forbear from imposing such regulations on all carriers by adopting regulations that are universally applied to common carriers regardless of their regulatory status.

Respectfully submitted,

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